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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

**JUN 16 1997**

In the Matter of )  
 )  
Industry Proposal for )  
Rating Video Programming )

Federal Communications Commission  
Office of Secretary

CS Docket No. 97-55

**SURREPLY COMMENTS OF  
THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS**

The Reporters Committee for Freedom of the Press submits these comments in response to comments and reply comments suggesting that the industry's proposed television ratings system be applied to news programming.

The Reporters Committee is a voluntary, unincorporated association of news editors and reporters dedicated to defending the First Amendment rights of the print and broadcast media. The Reporters Committee takes no position on the merits of the "voluntary" ratings system proposed by the industry. We are submitting these comments solely to address the limited question of whether whatever system may be adopted should apply to news.<sup>1</sup>

The Reporters Committee opposes rating news because doing so would diminish the media's ability to elucidate events for the public and hamper the public's ability to educate itself about critical issues. Reporting on the political, social and cultural issues of the day sometimes requires the use of strong language and images. It is crucial that television broadcasters be free to present explicit material that is germane to a newsworthy

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<sup>1</sup> The Reporters Committee opposes any attempt by the government to regulate content, including through the use of mandated ratings systems.

story. The protection of children will not be achieved by limiting adults to viewing only "decent" and nonviolent television.

Yet, this is exactly what would occur if news were rated. The inevitable result of applying the ratings system to news will be to chill free speech on important public issues. As the Supreme Court has noted in other contexts, editors facing content regulations will seek to avoid controversy by excluding even questionable material from their broadcasts.

**1. Rating news would diminish the flow of important information to the public.**

**a. Reporting on stories of great social import sometimes requires the use of strong language or images.**

Reporting on important political, social and cultural matters sometimes requires the use of explicit language. In striking down a statutory ban on making indecent speech available to minors on the Internet, a district court enumerated myriad examples of newsworthy themes that arguably fell within the purview of the statute. *ACLU v. Reno*, 929 F. Supp. 824, 853 (E.D. Pa.), *cert. granted sub nom. Reno v. ACLU*, 117 S.Ct. 554 (1996). The court noted that such topics as female circumcision rituals performed in other countries, prisoner rape, and transmission of the HIV-virus and safe sex techniques necessitate the use of strong language and images.

As with Internet communication, broadcast news programming addressing important issues such as the ones cited above and others, including war coverage and court reporting, may

necessarily contain some violent or sexually explicit material. However, these topics clearly are of significant public interest and concern, and the public needs to have the opportunity to remain informed about them. Journalists should not be impeded in their efforts to fully and intelligently explore significant issues of public concern.

**b. Application of the rating system could discourage news organizations from reporting stories that would garner a stigmatizing rating.**

As noted above, reporting stories of great social import sometimes requires the use of speech and images that would be targeted by the rating system. Applying the rating system to news would place television journalists in the untenable position of having to choose between airing a newsworthy story that might result in an pejorative rating, or excluding from their newscasts material that is protected by the First Amendment.

The threat of a restrictive rating would inevitably operate as a prior restraint on the news media, unconstitutionally chilling free expression and discouraging publication of newsworthy stories.<sup>2</sup> For example, the Supreme Court struck down a right of reply statute on this basis, noting that newspapers

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<sup>2</sup> Content restrictions, like the proposed ratings system at issue here, are not rendered less objectionable because the regulation is one of classification rather than direct suppression. *Interstate Circuit, Inc. v. City of Dallas*, 390 U.S. 676, 688-689 (1968); *Bantam Books v. Sullivan*, 372 U.S. 58 (1963); cf. *Grosjean v. American Press*, 297 U.S. 233, 244-45 (1936) (observing that the First Amendment forbids not only press censorship, but "any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens").

facing penalty "might well conclude that the safe course is to avoid controversy," causing political and electoral coverage to be "blunted or reduced." *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974); *cf. ACLU*, 929 F. Supp. at 856 (noting that content providers on the Internet facing the threat of criminal prosecution are unlikely to willingly subject themselves to prosecution for an error in judgment as to what is indecent).

Rating news would effectively act as a prior restraint or outright ban on controversial speech, depriving adults of practical access to that speech. The Supreme Court has found that when laws deny adults their free speech rights by allowing them to read, watch or hear only what is acceptable for children, they will fail to pass constitutional muster, even if the intent is to achieve the laudable purpose of protecting children from the alleged harmful effects of that material. *Sable Communications of California, Inc. v. FCC*, 492 U.S. 115 (1989); *Butler v. Michigan*, 352 U.S. 380, 381 (1957) (striking down a statute prohibiting the sale of "immoral, lewd, or lascivious" *i.e.*, indecent material since it denied adults their First Amendment rights by limiting them to only what was acceptable for children).

Yet this is precisely what applying a ratings system to news would do. Rating news would encourage media organizations to air only what is deemed to be fit for children, curtailing the public's access to newsworthy information, in an effort to

protect children from the alleged harmful effects of that material. Adults need, and want, access to uncensored news programming.

Adult viewers have expressed dissatisfaction with past efforts to dilute news programming. In January 1994, Minneapolis television station WCCO implemented "family-sensitive" newscasts that de-emphasized graphic depictions of violence, and stations in other cities followed suit. Andy Meisler, *Blunting TV News's Sharp Edges*, *New York Times*, December 14, 1994 at D20; Jim Loney, "Family-Sensitive" Newscasts: An Update on a National Experiment, *Los Angeles Times*, January 22, 1995, TV Times at 8. Most television stations abandoned family-sensitive programming, in part because viewers "saw sensitive news as censored news -- an incomplete or watered-down report." *Electronic Media*, April 29, 1996 at 4; see also Jim Abbott, *WESH Takes Spotlight Off Crime News*, *The Orlando Sentinel*, April 26, 1997 at A1 (quoting a television station general manager as saying that the station "probably lost more viewers because they saw [family-sensitive programming] as a shorthand for censorship: 'We weren't showing them all the news'").

Although some adult viewers may wish to shield children from strong images, they do not want news broadcasts to be censored or sugarcoated. Howard Kurtz, "Family-Sensitive" News Programs Tone Down Coverage of Violence, *The Washington Post*, July 19, 1994 at B1. In addition, television can be a powerful educational tool, and some parents may wish to expose their children to the news as

a vehicle for exploring such issues as gang violence, teenage pregnancy and domestic violence. This legitimate use of television news would be thwarted if media organizations air diluted accounts of controversial stories, or decline to report on them at all, for fear of garnering a pejorative rating.

**2. Applying the ratings system to news does not comport with Supreme Court precedent requiring the government to adopt the least restrictive means when limiting important free speech rights.**

Content-based regulations of speech must be the least restrictive means to achieve a compelling government interest. *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992). The Reporters Committee asserts that applying the ratings system to news does not constitute a narrowly-tailored means of accomplishing a compelling governmental interest.

Courts have long recognized that the government has a lesser interest in regulating socially useful information, even if conveyed through language that some might believe is inappropriate for children. For example, the panel in *ACLU v. Reno* recognized that the government has a compelling interest in "safeguarding the minor," in cases "where the potential harm to children from the material was evident." *Id.* at 852. The court cited to *New York v. Ferber*, 458 U.S. 747 (1982), which involved a statute prohibiting persons from knowingly promoting sexual performances by children under 16 and distributing material depicting such performances, and *Sable*, where the court considered the constitutionality of a statute banning indecent telephone

messages.

However, the *ACLU* court distinguished those cases from the one before it.

In contrast to the material at issue in those cases, at least some of the material subject to coverage under the "indecent" and "patently offensive" provisions of the [statute] may contain valuable literary, artistic or educational information of value to older minors as well as adults.

*Id.* at 852; *cf. Action for Children's Television v. F.C.C.*, 58 F.3d 654, 685 (D.C. Cir. 1995) (Wald, J. dissenting) (noting that when a radio station host read over the air from a *Playboy* Magazine interview of Jessica Hahn about her alleged rape by the Reverend Jim Bakker, the FCC did not regard the material as indecent because it involved matters of obvious public concern), *cert. denied*, 116 S.Ct. 701 (1996).

Similarly, a broadcast journalist exploring controversial issues or covering a military conflict would need to use explicit language and images in order to present the complete story to the viewing audience. *Cf. Alliance for Community Media*, 56 F.3d at 130 (Wald, J. dissenting) (opining that a documentary on the work of photographer Robert Mapplethorpe which did not include some description or depiction of his sexually explicit photographs "would hardly be an informative statement on the artistic and political debate the exhibit engendered"). In order for television journalists to keep the public fully informed about current events, they need to be able to explore these issues openly, even if doing so requires the use of speech or images that are "indecent" or violent.

## CONCLUSION

The primary purpose of the First Amendment is to protect and encourage an "unfettered interchange of ideas for the bringing about of political and social changes," *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964), and the press plays a vital role in promoting informed debate on matters of public concern. *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936) ("[a] free press stands as one of the great interpreters between the Government and the people"). FCC Chairman Reed E. Hundt observed in a recent speech that 69% of the American public gets its news from television. Chairman Hundt Speech, April 30, 1997, Museum of Television and Radio, New York City. In order for television journalists to keep the public informed about important political, social and cultural matters, they need to be able to discuss controversial issues without fear of being stigmatized.<sup>3</sup>

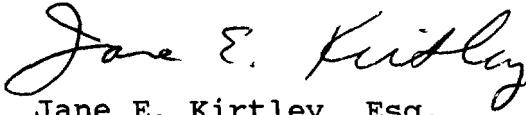
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<sup>3</sup> Chairman Hundt further noted that the way to maintain excellent standards in broadcast journalism is to "protect TV journalists to the full extent of protection that the First Amendment can afford" rather than to "reward or punish any broadcaster for the content, point of view or opinions that the broadcaster expresses." Hundt speech.



For the foregoing reasons, the Reporters Committee urges the Commission to exempt news programming from the proposed rating system.

Respectfully submitted,

A handwritten signature in cursive script, reading "Jane E. Kirtley".

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